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SUBMISSION TO SELECT COMMITTEE

Inquiry into the Aboriginal and Torres Strait Islander Voice Referendum

Submission to Joint Select Committee
Parliament House
Canberra ACT 2600
Australia

Submitted by
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INTRODUCTION

This submission is presented on behalf of the Josephite Justice Office, a ministry of the Sisters of St Joseph. The Sisters of St Joseph and our Associates (numbering approximately three thousand women and men) were founded in the mid- nineteenth century by Mary MacKillop and Julian Tenison Woods to work with those suffering from poverty and social disadvantage. We educate, advocate and work for equity and justice, for earth and for people, and especially for those pushed to the margins of our world.

Our submission to the Select Committee has been developed out of fundamental concern for the rights of First Nations peoples in Australia. We do support, without hesitation, the Uluru Statement from the Heart, and endorse a YES vote for the referendum which Australians will be asked to consider later this year.

As Australians, we recognise that First Nations peoples have lived through 65,000 years of continuous Indigenous culture in this land, and that justice requires the 120-year-old Australian Constitution be updated, to recognise and empower the people who were here first, and whose lands have never been ceded.

Ongoing debates and polarisation which have emerged in recent months across the political divides, have led to a clear recognition, not only for more rational and thoughtful discussion, but also for stronger safeguards for human rights in this country. If Australia is to act with justice with regard to its First Nations people, and at the same time, to take its human rights seriously, we believe it is essential for the Government to give serious consideration to the invitation to all of Australia to respond positively to the call of the Uluru Statement from the Heart.

PURPOSE OF CONSULTATION

The Government has identified the purpose of this consultation as being to examine:

- The wording of the bill and its effectiveness in achieving its goals

Accordingly, this submission will focus on:

- The context and aims of the proposed "Voice Referendum"
- the way that the proposed wording of the change to the Constitution affords a secure and protected means of achieving its aims and intended outcomes.

CONTEXT AND AIMS

The landmark *Uluru Statement from the Heart* was an invitation directed to the Australian people in 2017, and had been specifically developed in response to the Government's invitation to First Nations Peoples to explore options for recognition in the Australian Constitution. It calls for a "First Nations Voice" in the Australian Constitution and a "Makarrata Commission" to supervise a process of "agreement-making" and "truth-telling" between Parliament and [Aboriginal](#) and [Torres Strait Islander](#) peoples.

The call is quite clearly for a "First Nations Voice" in the Australian Constitution. It is envisaged that a Makarrata Commission would supervise a process of agreement-making between governments and First Nations peoples, and a truth-telling account about First Nations history.

In the words of the proposed referendum, the Voice will be "an enduring institution to ensure that Aboriginal and Torres Strait Islander peoples can make representations to the Commonwealth Parliament and the Executive Government on matters that relate to them, improving the development and implementation of laws and policies."

As Josephites, we support the proposed wording of the referendum. It was developed by the expert Referendum committee following wide consultation, and it has received the strong backing of Constitutional lawyers and experts.

THE PROPOSED ALTERATION TO THE CONSTITUTION:

Chapter IX Recognition of Aboriginal and Torres Strait Islander Peoples 129 Aboriginal and Torres Strait Islander Voice

“In recognition of Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia:

1. There shall be a body, to be called the Aboriginal and Torres Strait Islander Voice;
2. The Aboriginal and Torres Strait Islander Voice may make representations to the Parliament and the Executive Government of the Commonwealth on matters relating to Aboriginal and Torres Strait Islander peoples;
3. The Parliament shall, subject to this Constitution, have power to make laws with respect to matters relating to the Aboriginal and Torres Strait Islander Voice, including its composition, functions, powers, and procedures.”

COMMENTS

- Legal and Constitutional experts, including former High Court judges, have endorsed the reality that **a Voice to Parliament is a legally safe way to constitutionally recognise Indigenous Australians**
- The Voice to Parliament is a straightforward proposal whose time has come.
- The language is short, simple and clear, and Constitutionally appropriate.
- The alteration ensures that First Nations peoples are included in the Australian Constitutions, and are recognised as the first peoples of this land, with a unique place in our history.
- The Statement includes the clear provision that First Nations Peoples are to be consulted on matters related to their lives. The very specific power conferred on them by the Constitution relates to those matters that have a direct and significant impact on them.
- It remains the role of Parliament to determine how the Voice will operate (in its composition, functions, powers, and procedures).
- Parliament cannot legislate to alter or remove the capacity of the Voice.

- Despite the debate regarding unintended consequences, it is the view of Constitutional lawyers that the wording safeguards both the Parliament and First Nations peoples. The word 'representations', for example, is an appropriate one as it does not require reciprocity or obligation. It enables and empowers the taking of action by the Voice but it does not require obligations. This would safeguard all parties in those possible disagreements currently being raised by opponents to the Voice.
- Parliament or the Executive Government would not be obliged to implement a representation of the Voice. Representations are clearly defined as advisory, and while it is hoped they would be treated with respect and given weight, it is not required that they be followed up.
- It is necessary to embed the Voice in the Constitutions (rather than consigning it to legislation at local, regional or national levels) to protect it from being changed by successive Governments (as was seen when the Howard Government abolished ATSIC).
- Whether the wording remains with the term "Executive Government" or an alternative "Ministers of State", it remains our view (following advice from Constitutional experts) that this would be an unnecessary, if optional, change.
- The majority of First Nations Australians support constitutional recognition.

In the Uluru Statement from the Heart, 250 representatives of First Nations people across Australian called for "substantive constitutional change and structural reform", through which they argued, 'this ancient sovereignty can shine through as a fuller expression of Australia's nationhood.' We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country. "

We urge Government and Opposition to put aside short-term political advantage and work together to realise this movement of the Australian people for a better future. The question for all of us must be faced. What sort of country and planet will our children, grandchildren and great grandchildren inherit, without the recognition of the voice to Parliament.

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